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C O N F I D E N T I A L SECTION 01 OF 03 TEL AVIV 000183

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SUBJECT: A/S POSNER DISCUSSES GOLDSTONE REPORT WITH SENIOR
ISRAELI OFFICIALS

REF: A. A) 09 TEL AVIV 02831
[1](#)B. B) 09 TEL AVIV 02342
[1](#)C. C) 09 TEL AVIV 2283

Classified By: Charge d'Affaires Luis G. Moreno for reasons 1.4 (b) and
(d).

[1](#)1. (C) SUMMARY: A delegation headed by Michael Posner, Assistant Secretary for Democracy, Human Rights, and Labor, met with senior Israeli officials in early January to discuss Israel's response to the UN Goldstone Report. Deputy Prime Minister Dan Meridor said the GOI was deliberating whether to appoint an independent review panel to assess the MOD investigations into alleged law of war violations and some issues of military doctrine. He said senior officials understand they need to respond to the Goldstone allegations, but have not agreed on the mandate, responsibilities, or composition of such a panel. In meetings with Ministry of Foreign Affairs officials, A/S Posner discussed how best to prepare for the March UN Human Rights Council session and provided an assessment of what measures the international community would focus on, including the perceived independence and credibility of any Israeli investigation. MFA officials emphasized the level of their cooperation with the U.N., including the Board of Outline Inquiry report that just resulted in an ex-gratia Israeli payment of ten million dollars for damage to UN facilities in Gaza, and hope for a positive public statement on this matter from U.N. Secretary General Ban Ki-moon. A/S Posner met January 6 with Deputy Attorney General Dr. Shavit Matias, who lamented that Goldstone's positive international reputation lent credibility to a report that she questioned whether he had even completely read. She stated that Israel had an obligation to investigate charges, and was doing so aggressively, but she expressed concern that the report would trigger other anti-Israel action at the UN and ICC and through claims of universal jurisdiction elsewhere. End Summary.

DEPUTY PRIME MINISTER MERIDOR

[1](#)2. (C) A/S Posner met with Deputy Prime Minister and Minister for Intelligence and Atomic Energy Dan Meridor, along with MFA Deputy Director General for North America Barukh Bina, on January 7. Meridor said he had called early on for a committee of inquiry, not because he did not have confidence in IDF procedures, but because Israel needed a process that would minimize its exposure to investigation by international actors, particularly by the ICC and countries that apply universal jurisdiction. It was important, he said, that Israel be seen as a country that is moral and reflects upon and investigates its actions, and he lamented that the Goldstone Report damaged Israel's credibility in this regard.

13. (C) Meridor explained that the GOI understood the urgent need to formalize a plan to respond to the Goldstone Report, but nothing had been agreed to yet. The details, including scope and composition of any Israeli investigatory committee, had not been agreed to, "but there is a feeling that we need to announce something within days," he said. It was Meridor's view that the urban combat conducted in Gaza required a new international legal paradigm. He added that figuring out the answer to the moral and legal questions posed by such combat was something that required an international effort, with the topic being discussed in depth in various fora.

14. (C) A/S Posner assured Meridor that the USG understood IDF concerns about having its conduct investigated by international bodies, as well as its concern that such investigations could set a precedent for each future conflict. He noted the international community would be looking for two elements in the GOI response to Goldstone's report. The first would involve the IDF making known its concluded investigations and an update on the status of ongoing investigations. The second would involve an examination of GOI processes and IDF doctrine issues. A GOI announcement by the March Human Rights Council of the establishment of a committee or similar process that would take a broad look at how the IDF conducted the operation, focusing on how urban combat could be conducted, if necessary, while limiting civilian casualties -- such as that described by the DPM -- would be useful. He advised that the GOI's presentation of its response was very important, given the lack of a compelling public narrative so far to compete

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with the Goldstone report, s flawed one. He encouraged the GOI to reach out to otherwise friendly countries that are on the fence, including the British, Dutch, and Chileans.

15. (C) Meridor expressed concern that a response to the Goldstone Report along the lines he was discussing with A/S Posner might not be adequate -- or happen quickly enough -- to slow progress toward action by ICC prosecutor Luis Moreno-Ocampo. Posner agreed that an effective GOI response to international concerns raised in the Goldstone report, including announcing establishment of an independent and credible Israeli process, would be very helpful to Israel's cause in many different fora.

MINISTRY OF FOREIGN AFFAIRS

16. (C) A/S Posner met with the MFA team involved in coordinating the GOI submission to UNSYG Ban, as directed by the UNHRC special session in October. Israeli attendees included Legal Advisor Ehud Keinin; Principal Deputy Legal Advisor Daniel Taub; Legal Counselor Arthur Lenk; Eviatar Manor, Deputy Director General for U.N. and International Organizations; Simona Halperin, Director for Human Rights and International Organizations; Meirav Elon Shahr, Director for U.N. Political Affairs; and Barukh Bina, Deputy Director General for North America. A second meeting was held at the MFA, s request with MFA Director General Yossi Gal.

17. (C) A/S Posner laid out for the MFA officials in both meetings the two-pronged approach he had discussed earlier with Meridor, stressing that the GOI has a positive story to tell about its domestic efforts. A review of the IDF's investigations, along with an examination of lessons learned and best practices in asymmetrical warfare, would be a more compelling narrative internationally than a limited report focusing only on the cases highlighted in the Goldstone Report. A/S Posner also suggested that the GOI look closely at working with independent third-party "validators," to include sometime skeptics, who could vouch for the seriousness of GOI's investigatory process. Ultimately, he

explained, the international community would assess whether an Israeli investigation was independent and rigorous, whether anyone would be held accountable (e.g., wrongdoing being addressed through criminal charges or disciplinary action), and whether and to what extent the army would look at doctrinal and operational changes based on lessons learned. In this context, Posner noted that the delegation's discussions with the IDF had been very illuminating and that the senior IDF leadership indicated that it was thinking carefully about the lessons learned from its experience in Operation Cast Lead.

18. (C) MFA legal advisor Keinan noted concern with any process that might substantively reopen and re-evaluate the specifics of the IDF's investigations of the 36 cases highlighted in the report. He thought that the GOI should instead highlight the very real and thorough process that the GOI had undertaken. The legal team also worried about the timing of public announcements once the IDF begins to close some of the individual investigations for lack of evidence, while at the same time not being in a position to comment on those investigations that might lead to disciplinary or other individual accountability, as those cases typically take longer to bring to closure.

19. (C) Manor explained that Israel was working hard (with a team led by PDLA Taub) to prepare its submission to the UN on January 29 as input for the Secretary General's report to the Human Rights Council. He noted that Israel would like its cooperation acknowledged. Manor noted that the UN's High Commissioner for Human Rights would issue a separate report in March, and while he expected that report and the Secretary General's report to be "negative," he advised that the Secretary General should be involved directly with both drafts to avoid discrepancies between them that could prove embarrassing to him and his office. Manor said he did not think the UNSC would meet on the Goldstone Report right away. Rather, he anticipated that the Arab world would wait for "a critical mass of events" to take place and then push for the UNGA or UNSC to take up the matter. Posner commented that any flare-up of violence could provide an excuse for countries to hasten consideration of the report.

110. (C) Finally, A/S Posner asked if the Israelis were aware that Hamas was working with international legal experts to assess its role in the war. The MFA officials said they had

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not known of this, but that they would share a paper with the USG detailing allegations against Hamas so that the international community could highlight its conduct as well, especially since the Goldstone Report set a low bar of criticisms for Hamas to jump over.

DEPUTY ATTORNEY GENERAL MATIAS

111. (C) A/S Posner met with Deputy Attorney General Matias on January 6 to discuss strategies for dealing with the Goldstone Report. Matias offered that the IDF's position was understandable regarding the allegations in the Goldstone report, and expressed outrage at the report, calling the charges "unconscionable." She said Israelis would have looked seriously at the criticisms if the report had been more balanced, but that these allegations were "not even answerable." Matias lamented that Goldstone's reputation lent credibility to a report that she questioned he had completely read. She stated that Israel had an obligation to investigate charges, and was doing so aggressively. Matias asked if the U.S. expected support from Secretary General Ban Ki-Moon in responding to the report, and expressed concern that the report would trigger other cases in the UN, ICC and elsewhere. She expressed particular concern about claims of universal jurisdiction in other countries and about allegations before ICC Prosecutor

Moreno-Ocampo, particularly those involving injuries to persons who were dual nationals (with one nationality being of a country that is a party to the Rome Statute). She asked Posner's advice on whether the Israelis should meet with Moreno-Ocampo. A/S Posner said that he would want to think about the question more deeply, but that there could be benefits to their talking to him.

Welfare Minister Yitzhak Herzog

¶12. (C) Minister of Social Affairs and Social Services Yitzhak Herzog met with A/S Posner on January 5, providing background to his decision to be the sole dissenting voice within the cabinet advocating that the government should cooperate with Goldstone during his investigation. He said that had Israel done so, however, it still would not have changed the report, as Goldstone relied unfairly on NGO memos that he just pasted into the report. Herzog also suggested that Goldstone (whom his father, late President Chaim Herzog, knew well) had arrived at his conclusions in advance. Herzog said that he was not involved in the inner cabinet workings on what to do next, but that Dan Meridor was a key figure in organizing the GOI response to Goldstone. He added that the real problem for Israel was how the Goldstone report mischaracterizes international humanitarian law in a way that provides non-state armed terrorist groups like Hamas with incentives to break the rules. Herzog, who was in charge of humanitarian efforts during Cast Lead, also requested the Ambassador's help in transferring the millions of shekels to 700 persons in Gaza who were entitled to work injury compensation, which the Palestinian Authority had received from the GOI but had not transferred to the individuals in Gaza.

¶13. (U) A/S Posner was accompanied on his visit by Deputy Legal Adviser Robert Harris, DRL's Multilateral and Global Affairs Office Director Joseph Cassidy, and Army JAG School Executive Director Col. David Graham (Ret.).

¶14. (U) A/S Posner's delegation cleared this cable.
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